Supreme Court, U.S.
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No. _____

In the Supreme Court of the United States

THE PALESTINE LIBERATION ORGANIZATION, ET AL.,
Petitioners,

v.

EFRAT UNGAR, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

PETITION FOR WRIT OF CERTIORARI

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Questions Presented

1. Whether a case brought for the death of a U.S. national in Israel, against the Palestinian Authority and the Palestine Liberation Organization, under the Anti-Terrorism Act (ATA) is justiciable in Courts of the United States if all the events occurred in Israel, or Occupied Palestine where all the parties resided and which requires judicial decisions of law and fact about (a) political events and conditions in Palestine over a period of decades, (b) various United Nations decisions and actions, (c) numerous sensitive political agreements and acts of participants in the Middle East peace process, including the United States, over a period of years, (d) the internal confidential agreements and conduct of Palestinian organizations including the Palestine Authority, the Palestine Liberation Organization and the Islamic Resistance Movement, Hamas, and their leaders and (e) the U.S. has filed a Statement of Interest in an ancillary proceeding declaring the relief requested by Plaintiffs "would have a negative impact ... in negotiations to resolve the Israeli-Palestinian Conflict."

2. Whether the Court of Appeals correctly applied the Foreign Relations Law of the United States in its determination that Palestine has not achieved Statehood which would immunize it from suit under the ATA, including its conclusion that it would be "anomalous indeed to hold that a state may *achieve* sufficient independence and statehood in the first instance" while under foreign hostile military occupation which has existed for thirty eight years including twelve years of agreements and actions in an ongoing peace process.

3. Whether the complete withdrawal of all Israel Armed Forces and Settlements from Palestinian Gaza in August

2005 has removed the last obstacles to Statehood in that part of Palestine entitling Palestine to immunity from actions brought under the ATA.

List of Parties

RULE 14.1(b) STATEMENT

A list of all parties to this proceeding in the court whose judgment is the subject of this petition is as follows:

Defendants-Petitioners:
THE PALESTINE LIBERATION ORGANIZATION; THE PALESTINIAN AUTHORITY, a/k/a The Palestinian Interim Self-Government Authority;

YASSER ARAFAT, HBRIL RAJOUB; MUHAMMED DAHLAN; AMIN AL-HINDI; TAWFIK TIRAWI, RAZI JABALI, ABDEL RAHMAN ISMAIL ABDEL RAHMAN CHANIMAT; JAMAL ABDEL FATAHTZABICH AL-HOR; RAED FAKHRI ABU HAMDIYA; IBRAHIM GHANIMAT; IMAN MAHMUD HASSAN FAUD KAFISHE, HAMAS-ISLAMIC RESISTANCE MOVEMENT, a/k/a Harskat Al-Muqawama A;-Islamiyya

Plaintiffs-Respondents:
EFRAT UNGAR, by and through the Administrator of his Estates, David Strachman, DVIR UNGAR, a minor, by his guardians and next friend, Prof. Meyer Ungar, et al; UISHAI UNGER, a minor, by his guardians and next friend, Prof. Meyer Ungar, et al; PROFESSOR MEYER UNGAR, individually and in his capacity as legal guardian of Dvir and Yishai Ungar,, JUDITH UNGAR, individually and in her capacity as legal guardian to Dvir and Yishai Ungar, RABBI URI DASBERG, individually and in his capacity as legal guardian of Dvir and Yishai Ungar; JUDITH DASBERG, individually and in her capacity as legal guardian to Dvir and Yishri Ungar, AMICHAI UNGAR; DAFNA UNGAR; MICHAL COHEN; YARON UNGAR, by and through the Administrator of his Estate, David Strachman.

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Citations of Opinions and Orders

The Citation of the Court of Appeals opinion is 402 F.3d 274 (1st Cir. March 31, 2005)(A 1a); its judgment on interlocutory appeal is unofficially reported at 2003 U.S.App. LEXIS 27782 (1st Cir. May 27, 2003)(A 41a). Citations of the decisions of the Rhode Island District Court and the roman numerals it assigned to four of the decisions are: 325 F.Supp.2d 15 (A 45a) (July 12, 2004): 315 F.Supp.2d 164, *Ungar IV* (April 23, 2004): 304 F.Supp.2d 232, *Ungar III* (A 66a) (January 27, 2004); 215 F.R.D. (April 18, 2003); 238 F.Supp.2d 40, *Ungar II* (November 4, 2002); and 153 F.Supp.2d 76, *Ungar I* (July 24, 2001). *See also Ungar v. Islamic Republic of Iran*, 211 F.Supp.2d 91 (D.D.C. June 26, 2002).

Basis for Jurisdiction in this Court

The judgment of the U.S. Court of Appeals for the First Circuit sought to be reviewed was entered on March 31, 2004, 04-2079. The time of petitioners, the Palestinian Authority (PA and the Palestine Liberation Organization (PLO), to file a petition for rehearing was extended on their motion to May 13, 2005 and they timely filed their petition. The petition was denied by order entered on May 20, 2005, (A 83a). Petitioners motion to extend their time to file a petition for a writ of certiorari for 60 days, to and including Monday, October 17, 2005 was granted by Justice Souter on August 8, 2005, (05A137). This Court's jurisdiction is conferred by 28 U.S.C. §1254(1).

Constitutional and Other Provisions

Pertinent provisions of the Anti-Terrorism Act of 1991, 18 U.S.C. 2331, *et seq*, ("the ATA"), which plaintiffs invoked in filing this action, and the U.S. Constitution are set

forth in the Appendix, as are two statutory provisions that entitle petitioners to immunity for purposes of this action, 28 U.S.C. §1604 and ATA §2337(2), and that also negate the District Court's subject matter jurisdiction, as does ATA §2336(a) read with ATA §2331(4).

Statement of the Case

This action was commenced under the Anti-Terrorism Act 18 U.S.C. §2331 et seq. (the ATA), on March 13 2002 in the U.S. District Court for the District of Rhode Island by the relatives and legal representatives of Yaron and Efrat Ungar, West Bank settlers. The Ungars were fatally shot while driving in the vicinity of Beit Shemesh, Israel on June 9, 1996 by Hamas gunmen. Yaron Ungar held U.S. citizenship. His wife Efrat did not. Claims based on Efrat's death were dismissed at the outset because she lacked the American citizenship ATA requires.

The complaint named Hamas and the gunmen it alleged were Hamas members, as defendants, and also included as defendants for their alleged general support of Hamas, the Palestine Authority (PA), the Palestine Liberation Organization (PLO), President Yasser Arafat and other individuals who were alleged to be officials of the PA and/or PLO or otherwise connected with them.

The complaint alleged a civil claim for "international terrorism" under ATA §2333 and supplemental generic tort claims. The ATA was originally enacted in the fall of 1990 as the Anti-Terrorism Act of 1990 . For technical reasons it needed to be enacted again in 1992. The Appendix sets forth the statute as reenacted in 1992.

The PA, the PLO and President Arafat and the other individual defendants appeared by counsel to contest the